

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TONYA SUTTON,

Plaintiff,

v.

HEARTLAND PAYMENT SYSTEMS,
LLC, and JOSEPH WAYNE RIGSBY,
SR.,

Defendants.

No. 1:18-cv-00723-PJK-KK

**ORDER DENYING PLAINTIFF TONYA SUTTON'S
MOTION FOR DEFAULT JUDGMENT**

THIS MATTER is before the court on Plaintiff Tonya Sutton's Motion for Default Judgment as to Defendant Joseph Wayne Rigsby, Sr. (ECF No. 16). Upon consideration thereof, the court finds the motion is not well taken and should be denied.

Mr. Rigsby has not made an appearance in this lawsuit. When a defendant fails to plead or defend, a plaintiff may seek a default judgment against him under Fed. R. Civ. P. 55. Here, however, there are two impediments to entering a default judgment at this time. First, Rule 55 requires the clerk to enter a party's default before a default judgment may be entered by the court; there appears to be no request, so the clerk has not yet done so. Fed. R. Civ. P. 55(a), 55(b). Second, and more importantly, when a defendant

defaults who is alleged to be jointly liable for damages, “judgment should not be entered against him until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted.” Hunt v. Inter-Globe Energy, Inc., 770 F.2d 145, 147 (10th Cir. 1985) (quoting 10A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2690); see also Frow v. De La Vega, 82 U.S. (15 Wall.) 552, 554 (1872). Until the court resolves the merits of this case, default judgment against Mr. Rigsby would be premature.

NOW, THEREFORE, IT IS ORDERED that Ms. Sutton’s Motion for Default Judgment (ECF No. 16) filed September 24, 2018, is denied.

DATED this 24th day of April 2019, at Santa Fe, New Mexico.

Paul Kelly, Jr.
United States Circuit Judge
Sitting by Designation